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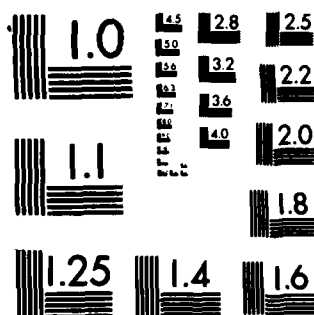
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THESIS

THE DEVELOPMENT AND IMPLEMENTATION OF
THE PROMPT PAYMENT ACT
SENATE BILL 1131

by

Kennard Ray Hall
and
Bobby Leon Sutton, Jr.

March 1983

Thesis Advisor: J. R. Bergquist

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The Development and Implementation of
the Prompt Payment Act
Senate Bill 1131

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ABSTRACT

The enactment of Public Law 97-177 is considered a most effective directive for improving the Government's bill paying practices. This study, undertaken to investigate the need for such legislation and to analyze procedures established to implement the law, indicate the law has the potential for improving the Government bill paying reputation. Additionally, business concerns will be assisted in improving cash-flow problems generated by the slow bill paying practices of the Government. Problems inherent in the implementation of this law are: reconciling prompt bill payment with Federal cash management practices; ensuring contract funds are not channeled into nonproductive interest payments; reducing the administrative burden created to monitor bill payment and interest penalty payment; assigning responsibility for late payments and funding of interest payments.

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I. INTRODUCTION

The Prompt Payment Act, Public Law 97-177, represents the culmination of efforts by individual business concerns, professional and trade associations, and special interest coalitions who have experienced difficulties in obtaining timely payment for goods and services provided to Federal Departments and agencies. These delays occurred despite extensive administrative efforts and regulations requiring expeditious processing and payment of invoices for Government contractors. This legislation requires agencies to make interest payments whenever they fail to make payment promptly and is viewed as the most effective means of ensuring compliance. As stated by Mr. Hilton Davis, Vice President for Legislative Affairs for the Chamber of Commerce of the United States in his letter of support of Senate Bill 1131, "...businesses prefer to receive payment on time rather than to accept interest on delinquent accounts" [Ref. 1]. The interest payment provisions of the Act are therefore viewed as a penalty for failure to accomplish the requirement for making payment on time. For that reason, the Congress anticipated that interest payments would be minimal, and no additional funds have been or will be provided for the purpose of financing Federal department and agency penalty interest. In the Department of the Navy, all interest payments paid by Navy paying offices are to be charged to the appropriation Operations and Maintenance, Navy. Interest payments paid by Marine Corps paying offices are to be charged to the appropriation Operation and Maintenance, Marine Corps. Additionally, the reasons for delinquent payment must be identified and reported. Implementation of the Act is expected to result not only in

timely payments, but also in better business relationships with suppliers, improved competition for Government business, and reduced cost for material and services. [Ref. 2]

A. OBJECTIVES OF THE RESEARCH

The objectives of this research are: (1) to briefly compare commercial and military bill-paying practices, (2) to examine the history and intent of the law, (3) to analyze the key provisions of the law, and (4) to identify and discuss major implementation procedures.

B. RESEARCH QUESTIONS

In order to accomplish the objectives of this study, the following research question is presented: What were the major issues culminating in the requirement for legislation to improve Government bill-paying practices?

Supplementary questions are addressed as follows: (1) What is the basic intent of the law? (2) What incentives does the law provide? (3) How will implementation be accomplished? (4) How will compliance be evaluated?

C. SCOPE, LIMITATIONS AND ASSUMPTIONS

Public Law 97-177 is applicable to all Federal agencies. This study will focus on the general applicability of the law utilizing procedures and policies of Department of Defense departments and agencies as illustrations and examples. The provisions of this Act entail additional obligations for both Government and business concerns as well as providing great potential for improving efficiency in Government operations and assistance to businesses who, in many cases, were forced to borrow additional operating capital while awaiting payment for goods provided or services rendered.

The law has been in effect since October 1982, thus policies and procedures are still evolving. Many of those stated in this study are "point-in-time" and could become outdated as policy continues to evolve. It is assumed that the reader of this study is familiar with contracts and the acquisition process within the United States Government and especially the Department of Defense.

D. METHODOLOGY

The initial literature search revealed that there had been little or no comprehensive research conducted on the subject. The primary source of information concerning the background of the Act was found in Congressional records and studies performed by the General Accounting Office.

The initial literature search was followed by a series of telephone interviews with major policy participants in the Washington, D.C. area. Additionally, contact was made with several DOD procurement and paying activities. Activities contacted either on fact-finding trips or through telephone interviews, included the Office of Management and Budget; Congressional Budget Office; Office of Federal Procurement Policy; Office of the Assistant Secretary of the Navy (Shipbuilding and Logistics); Office of the Comptroller of the Navy; the Naval Material Command; the Navy Supply Systems Command; Headquarters U.S. Air Force; Fleet Accounting and Disbursing Center, Pacific; Navy Regional Finance Center, Washington, D.C.; Regional Financial Services Department, Naval Supply Center, Oakland, CA; Defense Contract Administrative Services Region, Los Angeles, CA; Defense Contract Administrative Services Region, Chicago, IL; Navy Regional Contracting Center, Long Beach, CA. Additionally, interviews were conducted with the Supply Officer, Naval Postgraduate School, Supply Officer,

Naval Station Long Beach, CA and the Officer-in-Charge, Navy Exchange, Naval Postgraduate School, Monterey, CA to gain the perspective of smaller activities concerned with prompt submittal of invoices for payment. Views were also gathered from interviews with civilian contractors and the Sterling Institute, Washington, D.C.

Since the enactment of the legislation in 1982, policy has been issued by the Office of Management and Budget with implementation procedures promulgated by each Federal agency and department. There have been several articles on the subject which have appeared in various professional magazines, such as Contract Management Published by the National Contract Management Association and the Government Contracts Service published by Procurement Associates, Inc. Additionally, the Federal Contracts Report published by the Bureau of National Affairs, Inc. provided comprehensive reports of hearing and views throughout the development of the legislation. Copies of numerous memoranda and position papers from sources in Washington policy offices and paying activities were obtained and examined.

E. ORGANIZATION OF THE STUDY

Chapter II, the "Framework", provides the reader with a background of commercial bill-paying practices and the Uniform Commercial Code and bill-paying practices of the Department of the Navy. Chapter III provides perspective of the intent of the law. Chapter IV introduces the reader to the major provisions of the law and Chapter V is an analysis of implementation procedures. Chapter VI presents the study's conclusions.

II. FRAMEWORK

A review of the provisions from which the Defense Acquisition Regulations received their basis will assist in fully understanding the Prompt Payment Act and, in addition, will provide a historical perspective to the events which led to its enactment. The Uniform Commercial Code (UCC) is the culmination of many years of detailed reviews of business practices and their effects within the law. These commercial business practices are the basis upon which the enactment of the Defense Acquisition Regulations were founded.

A. COMMERCIAL BILL PAYING PRACTICES AND THE UNIFORM COMMERCIAL CODE

Since the beginning of recorded time, business dealings have been represented by an unwritten law known as "generally accepted" business practices. As the administration of business became more complex, difficulties between parties arose which required arbitration or litigation in order to obtain a settlement. With the expansion of commercial trade beyond respective local borders a need was realized for regulations that would assist in governing the commercial disputes. Therein the foundation was prepared for the present day Uniform Commercial Code.

1. The Uniform Commercial Code

The first established regulations governing commercial transactions were promulgated in 1896 under the title, "Uniform Negotiable Instruments Law". Subsequently, specific areas of commercial practice were subjected to regulation; these were:

Uniform Warehouse Receipts Act.....	1906
Uniform Sales Act.....	1906
Uniform Bill of Lading Act.....	1909
Uniform Stock Transfer Act.....	1909
Uniform Conditional Sales Act.....	1918
Uniform Trust Receipts Act.....	1933

These acts were the first attempt to modernize business methods when of dealing at a distance rather than face to face. [Ref. 3] Though promulgated by the National Conference of Commissioners on Uniform State Laws, these separate and distinct regulations were not accepted by all states, but were amended to conform to the various state requirements. Therefore, it was eventually recognized that these separate acts needed substantial revision to maintain a cohesive, modern commercial endeavor.

In the fall of 1951, a Uniform Commercial Code was released with an endorsement by the American Bar Association. By 1961, almost every state had made amendments, destroying the uniformity goal established by the original code. [Ref. 3]

In October 1962, an amended version of the 1951 Uniform Commercial Code was released. In 1967 a committee was again established to study the UCC and the amendments attached by various states. After extensive research and consideration, the current (1972) revision was published. There have been no updates or revisions published since that time.

It is through the guidelines provided within the Uniform Commercial Code that business conducts itself. The UCC was purposefully written in a flexible, generalized manner to provide an innate ability for any forthcoming expansion of commercial practices. In so doing, the commission believed the courts could develop laws, as required, for unforeseen and new circumstances, within the commercial field. Section 1-102 of the UCC specifically states:

"This Act shall be liberally construed and applied to promote its underlying purposes and policies... (which are): (a) to simplify, clarify, and modernize the law governing commercial transactions; (b)... permit the continued expansion of commercial practices through custom, usage and agreement of the parties; (c)... make uniform the law among the various jurisdictions." [Ref. 3]

a. Administrative Regulations

It is this liberal, generalized construction of the Uniform Commercial Code which impedes the pinpointing of specific requirements for administering payment of invoices. The UCC generally states:

"Unless otherwise agreed: payment is due at the time and place at which the buyer is to receive the goods... (and when) authorized to ship the goods on credit, the credit period runs from the time of shipment... or date of invoice." [Ref. 3]

There are several administrative areas which influence the payment procedures. These areas will be discussed in detail in the following sections.

(1). Inspection. Inspection is the means by which the buyer can gain assurance that the goods ordered and received in fact meet the buyer's requirements and fulfill the seller's promise of performance. The Uniform Commercial Code states the buyer has a right to inspect goods at any reasonable place and time and in any reasonable manner..."unless otherwise agreed". [Ref. 3] In those more common cases where invoices are received prior to receipt of goods, the UCC requires payment before inspection. Again the general statement, "unless otherwise agreed", allows for payment to be made after inspection of the goods, if both parties agree. Over time, the "generally accepted" procedure in the commercial trade has been for inspection to be completed prior to payment with exceptions being agreed upon

by the contracting parties. Therefore, the inspection procedure is the first step in the payment process in the commercial environment.

(2). Acceptance. Upon completion of the inspection procedures and the goods are found to fulfill the requirements of the contract, acceptance of the goods is to be initiated in any reasonable manner. The rules requiring telegraphic acceptance, etc. are no longer considered binding. Any medium, "reasonable under the circumstances" may be utilized. [Ref. 3]

When either party takes action to continue performance, acceptance is to be considered granted and physical notification is not deemed necessary. However, acceptance notification which states terms or conditions additional to or different from those offered or agreed upon originally, is still considered valid unless acceptance is made conditional upon the assent to newly initiated terms.

Notification of acceptance must be given in "reasonable and 'seasonable' manner". This statement allows for ample interpretation as will be discussed in a later section.

(3). Tender. In relation to the acceptance by the buyer, "tender" is "a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them." [Ref. 3] In other words, the seller is guaranteed by law that the buyer must accept the goods in conformance with the contract, and the buyer must provide payment according to the contract. Additionally, the buyer's ability to retain or dispose of the delivered goods is conditional upon the payment(s) made to the seller. If payment(s) is(are) not made, then legally, the buyer cannot fully utilize the goods for their intended purpose.

If the "tender" is not in accordance with the provisions of the contract, the seller may arrange a conforming delivery if the contract has not expired. The buyer must notify the seller of nonacceptance and the seller must deliver the replacement goods in a "reasonable and seasonable" manner.

The seller is entitled to "tender from the buyer", which is the expected payment for the accepted delivery of goods. Payment may be made by any means and in any manner unless specifically detailed in the contract. If payment is required prior to delivery, the nonconformity of the goods will not excuse the buyer for nonpayment. However payment will not constitute acceptance of goods.

(4). Time. The Uniform Commercial Code states "that a reasonable time for taking action depends on the nature, purpose and circumstances of such action". "Seasonable" action is any action taken "at or within the time agreed or, if no time is agreed (upon), at or within a reasonable time". [Ref. 3]

These liberal definitions become effective only when a contract does not provide specific times for delivery and payment. In any case, the definition of "reasonable" and "seasonable" will depend entirely upon what constitutes acceptable commercial practice in relation to the nature, purpose and circumstances of the contract.

The time for payment and delivery are interrelated, with payment being made "in a reasonable manner" following the receipt, inspection and acceptance of the goods or services. [Ref. 3] If both contractual parties allow the original reasonable time to lapse, the contract is viewed as "enlarging the reasonable time for tender or demand of performance". [Ref. 3] Therefore the buyer and seller have, in effect, silently agreed to an extension of time.

(5). Remedy. During the course of any contract, the buyer and seller may become involved in a dispute which will affect the payment and scheduled expiration of the contract. As with any contract, withholding payment from the seller or the seller withholding goods from the buyer are but two examples of the methods for remedying disputes during the contract performance.

In those circumstances where the buyer refuses or is unable to provide payment for the goods received, there are several courses of action available to the seller to recover. If a buyer does not provide acceptance either before or after the receipt and inspection process, the seller may:

- (a) withhold delivery of such goods,
- (b) stop delivery while in transit.
- (c) make the goods available for resale as finished goods or scrap,
- (d) recover damages for non-acceptance,
- (e) cancel. [Ref. 3]

Whenever the seller stops delivery of any or all goods, the carrier must be notified in ample time to prevent delivery. In these cases, the shipment must be in a carload, planeload, truckload, or any larger shipment of express or freight--this will prevent any undue burden being placed upon the carrier for withholding small and insignificant deliveries.

If made available for resale either as finished goods or as scrap, the material must be reasonably identified as material resulting from a broken contract. The seller is in no way accountable to the buyer for any profit made from the resale. Additionally, the seller is entitled to damages for non-acceptance by the buyer. The

damages will be the difference between the market price together with any incidental damages, less expenses saved, due to the buyer's breach of contract. If these damages are inadequate to place the seller in as good a position as performance would have done, then the measure of damages will include the profit (including reasonable overhead) which would have been realized if full performance by the buyer had been made. This profit is in addition to any incidental expenses previously mentioned. When resale of the goods is impracticable, the seller may still hold for the full price, however the goods must be held aside for the buyer. In other words, if the buyer is forced to make payment the goods actually belong to the buyer.

Whenever the seller/buyer relationship becomes entangled in a dispute and the seller is found to be entitled to incidental damages, then charges include "commercially reasonable charges, expenses, commissions...transportation, care and custody of the goods after the buyer's breach, in connection with the return or resale of the goods...". [Ref. 3]

Whenever a buyer has refused acceptance for non-conformance or has not received the goods, there are specific alternatives available to recover. These alternatives are:

- (a) 'cover'...
- (b) recover damages, or
- (c) if the seller is insolvent and payment has been provided, recover all goods actually purchased.

If the seller refuses delivery or is unable to deliver, the buyer is authorized to "cover". In other words, a reasonable purchase of or contract to purchase may be made to substitute goods for those due from the seller. The buyer

may recover any difference in costs of the cover and contract and any incidental damages. [Ref. 3]

Damages which the buyer may recover are the differences between the market price and the contract price plus incidental damages, less any expenses saved as a result of the seller's breach of contract. The market price is determined at the place of delivery for cases of rejection after arrival and the place for tender in all other cases.

In those situations where payment has been provided for the goods in a buyer's possession but are not acceptable, the buyer may hold the goods and make arrangements for resale as though he were an aggrieved seller. This is in accordance with the above paragraph which explained the seller reselling goods refused by a buyer. A difference, however, is that the buyer, acting as an aggrieved seller, may not keep any profits resulting from the sale but only the amount paid and any costs involved in the handling of the goods.

Whenever a buyer accepts the goods from the seller and, at a later date, revokes the acceptance for non-conformity, the buyer may recover damages resulting from the reason for non-conformity. These damages are measured as the difference at the time and place of acceptance between the value of the goods accepted and the value of the goods had they been in accordance with contract provisions.

B. NAVY PAYING PROCEDURES AND THE DEFENSE ACQUISITION REGULATION

The Department of Navy (DON) is but one of three defense departments which make the Department of Defense the largest single procurement agency in the Government. The amount of procurement dollars is the second largest budgeted dollar

total in the defense budget. These dollars affect the ability of many contractors to remain in business, to expand or decrease production.

To ensure the contractors and the Defense Department are provided with standard policies, documentation requirements, and procedures which are used in contracting for government purchases, the Defense Acquisition Regulation (DAR) was established. The purpose of this regulation is stated in the opening paragraphs of the DAR:

"...establishes...uniform policies and procedures relating to procurement of supplies and services...and is designed to achieve maximum uniformity throughout the Department of Defense." [Ref. 4]

Within the DAR are listed standard clauses stating the Government's obligation to make payment. The Navy implements departmental policy and procedures which pertain to bill paying through the Navy Comptroller Manual Volume 4 (NAVCOMT Manual VOL 4) and Naval Supply Systems Command Publication 467 (NAVSUP P-467). [Ref. 4]

1. General Pay Procedures

In accordance with NAVCOMPT Manual VOL 4, authority is granted to disbursing officers to pay "approved bills for supplies or services purchased by and for the Navy or the Marine Corps." [Ref. 5] NAVSUP P-467 further specifies that:

"Small purchases normally will be retained for administration by the purchasing office. However, if field administration is required for one or more of the functions in DAR 1-406, the small purchase will be assigned to the cognizant contract administration services component for full performance". [Ref. 6]

These regulations establish basically two ways for paying contractors' bills funded with DOD funds.

- (1) Defense Contract Administration Services (DCAS) offices for administration and for the disbursement to be made by the cognizant Defense Contract Administrative Services Regional Office (DCASR), and
- (2) if no DCAS office is assigned for administration, a paying office is designated in accordance with Navy Department Regulations. [Ref. 4]

Bills are actually paid in both cases upon receipt of an invoice from the contractor. Several preceding steps must be taken, however, prior to actual disbursement of Government funds. A brief overview of the payment process is provided.

The basic contract document, DD 1155, establishes the basis for final payment by the paying activity. Upon submission of a Material Inspection and Receiving Report (DD form 250) to DCAS by the contractor, the DCAS office then submits a Shipment Performance Notice (S.P.N.) to the Purchasing Office and a Shipment Alert Notice (S.A.N.) to the consignee. This is to inform the respective activities that the material has been shipped. Upon receipt of the material, the activities notify the DCASR. When the signed purchase document, acceptance documents and the original and copies of the contractor's invoice have been received, then payment is initiated. [Ref. 7]

A less detailed administrative chain is involved with the payment of small purchase contract bills. Again, the DD 1155 establishes a basis for payment. The receiving activity (consignee) certifies each original invoice that all material or services were inspected and accepted and then forwards the invoice for payment to a paying activity designated in the contract. If the acceptance is not required by the consignee, the vendor may forward the invoice directly to the specified paying activity.

In all cases, the invoices submitted for payment must be an original and three copies. The invoice must be accurate and agree with the contract. If any disagreement is found, resubmission may be required or lengthy correspondence attempting to rectify the misunderstanding which will delay the payment.

2. Fast Pay

In an effort to reduce leadtime to consignee and enhance supplier relations by expediting payment for small purchases, the "fast payment" procedure was implemented approximately 1967. Payment is based upon the contractor's submission of an original invoice which will indicate that the goods have been shipped. If discrepancies do occur with the shipment, the contractor is required to repair, replace, or correct those goods not conforming to the contract. Paying centers do not require a receiving report or evidence of acceptance to make payment. [Ref. 6]

3. Integrated Disbursing and Accounting System (IDA)

The scope of IDA extends Navy-wide and to all appropriations and funds. The development effort represents the most significant change to financial processing in the Navy. The primary purpose of IDA is to utilize the latest automatic data processing equipment accounting facilities, thereby providing disbursing and collection services to many operating activities. By utilizing the latest ADP equipment, processing of financial control information is on a near real time basis. Organizations and responsibilities for the performance of accounting and disbursing functions are merged. [Ref. 8] IDA will allow purchasing activities the ability to electronically transmit procurement information from the DD 1155 to paying activities. In addition, certification data may be electronically submitted by the

receiving activity. [Ref. 9] When fully implemented, IDA will be of great assistance in shortening the payment cycle. The current pay procedures and the introduction of the IDA facilities will not enhance the payment of invoices unless the paying activities are held responsible for the late payments. The Prompt Payment Act is an attempt to create responsibility in the area of payments to contractors.

4. Defense Acquisition Regulation

With the implementation of the Prompt Payment Act, the DAR was revised to include an "Invoices" clause which was to provide a contractual understanding as to what describes a proper invoice and to establish guidelines to assist in determining if interest begins to accrue under the Prompt Payment Act. [Ref. 10]

C. SUMMARY

The Uniform Commercial Code was created based upon traditional business procedures which had been utilized for many years in the commercial arena. These same procedures became the nucleus for the establishment of the Defense Acquisition Regulation. With the advent of rising interest rates and the increasing costs of doing business with the government, supplemental regulations were needed to insure the government not only recognized its obligation to make payment but that the government paid its debts in a timely manner. The following chapter will provide the background, documentation, and intent of the Prompt Payment Act.

III. AN EXAMINATION OF THE INTENT OF THE LAW

The fact that the Government is slow in paying its bills was confirmed in a 1979 Government Accounting Office (GAO) study. It was reported that the Government's bill paying performance was more often good than bad, but that lengthy delays did occur and that many contractors believed they were not paid soon enough. The GAO found that, after adjusting for delays caused by contractors and other causes not attributable to Federal agencies, 30 percent of the Government's bills, covering 18 percent of the dollar total, were paid late. Based on the Office of Management and Budget (OMB) figures provided to the House Committee on Government Operations, these percentages represented approximately 9 million invoices paid late each year, or \$23.4 billion in late payments. [Ref. 11]

The dilatory pay practices of Government agencies has also been recognized by both small and large business concerns. This led to the support of such groups as the Slow Pay Coalition, an organization of twenty-four trade associations formed to bring their dilemma to the attention of Congress and the administration, and numerous professional associations to bring about administrative remedies to the slow, late, and delinquent pay issue. A list of the supporting organizations is found in Appendix A. Small businesses were perceived to bear the major burden of the Government's late payment practices. Many felt that by paying late, the Government borrowed money from companies interest free. In doing so, the Government and the organizations tasked with administering Federal funds take unfair advantage of small companies.

A. BACKGROUND

The necessity for administrative action to upgrade bill paying practices has long been recognized by the Government as well as industry. Recommendation 32 of the Commission on Government Procurement of December 1972 addresses the problems encountered by Government contractors and cited inconsistencies among agencies in the processing of vouchers as a reason for delayed payments. [Ref. 12] In an October 1980 recommendation to Congress regarding slow pay, the Commission suggested, as a part of the proposed Uniform Procurement Policy, the following:

"Timely Payment of Invoices: Despite emphasis on the problems of contractor cashflow problems and the importance of prompt payment of contracts by the Government, contractors continue to experience late payment. While contractors recognize the compelling importance of sound cash management practices, the Government's failure to pay on time still discourages firms from doing business with the government. Provisions for prompt payment of contractor invoices will be included in the system." [Ref. 1]

In the October 29, 1980 and February 21, 1982 proposals for a Uniform Federal Procurement System, it was recognized that while some agencies have excellent records for processing contractor invoices, other activities have not established receipt and inspection procedures necessary to alleviate slow payment. These proposals called for the Government to pay its contractors in time to take advantage of offered discounts, and as a norm, not more than 30 days after receipt of a proper invoice, but stressed that unearned discounts should not be taken. Additionally, the proposed system provides for greater use of fast-pay procedures for small purchases and a review of payment procedures to ascertain the magnitude of late payments and the possibility of streamlining procedures. [Ref. 13]

1. The Effect of Late Payments on Government Contractors

The Federal Government spends almost one-fifth of its annual budget in the purchase of products and services from the private sector. In the fiscal year ended June 30, 1976, the Federal Government purchased some \$65 billion of goods and services of all kinds from about 68,000 contractors. By fiscal year 1981, this total was in excess of \$134 billion and with the current Reagan Administration initiatives to bolster Defense spending, this figure is expected to continue its upward trend. This makes the Federal Government one of the nation's largest customers. In the expenditure of these funds, a wide cross-section of large and small businesses are affected. Late payment of Government bills is seen as one of the most pressing problems facing the small business community.

The plight of the small businessman is succinctly stated by Senator Jim Sasser, (Dem-Tenn.):

"Economic conditions, complicated by record high interest rates, are already driving large numbers of entrepreneurs into bankruptcy-particularly, small entrepreneurs. An overdue account exacerbates conditions for small businesses, which just do not have the cash flow capabilities, nor administrative personnel required to develop cash and credit management practices that would help them to weather the cost of carrying overdue accounts or high financing costs." [Ref. 1]

The frustration level of the small business community has continued to mount with time. Poor bill paying practices have been stated as the reason for this frustration. Many have come to the conclusion that to do business with the Government is something to be avoided when and if possible. Mr. Kenton Pattie, spokesperson of the Slow Pay Coalition states that in some industries, it has become a measure of success in business to be able to say, "Well you

know, I finally got to the point where I do not have to do business with the government anymore. I can say no to Government accounts." [Ref. 1]

In a sampling performed in 1982 of fifty unpaid invoices selected at random from the Regional Financial Services Department at the Navy Supply Center, Oakland, California, 80 percent of the small businessmen affected indicated at least some effect on cash flow and 78 percent felt some administrative problems were caused by late payment of invoices. To deal with the late payment problems, 76 percent of the vendors felt making telephone calls to the paying office was the most effective measure to take. Frequently vendors commented that they experienced difficulty determining the correct paying office. [Ref. 9]

Regardless of the amount the small businessman is awaiting in payment, it accumulates no interest, pays no payroll, nor covers any operating expenses. In terms of time, telephone calls, and exchange of correspondence trying to collect from the Government agency, the small businessman may, in fact, lose money.

2. Administrative Initiatives to Improve Government Bill Paying Practices

The often cited Government Accounting Office report concerning Government bill paying practices was the result of complaints to the Comptroller General, news articles, and constituent protestations to members of Congress as a result of contractor dissatisfaction concerning delays in getting paid by Federal agencies. Some of the findings from the study were:

- (1) Payment delays are caused by contractors as well as by Federal agencies. The 30 percent late payments caused by Federal agencies averaged 74 days from the invoice date until they were paid.
- (2) Delays in making payments harm the contractor's cash flow. Projecting the late payment results in the GAO

sample (for the 6 month period covered, January 1 through June 30, 1976) of total Federal procurements, GAO estimates that contractors might have incurred at least \$30 million in interest cost to provide the money tied up in overdue bills.

- (3) Some contractors reported that they quit offering the discounts because they (discounts) did not influence Federal agencies to pay faster.
- (4) Delayed payments may also cause contractors to stop doing business with Federal agencies.
- (5) Payments are delayed primarily because of the problems Federal payment centers have in obtaining all the paperwork needed to make payment.
- (6) Permeating the entire process is the lack of a Federal standard establishing when payment is due. [Ref. 14]

Spurred on by Congressional constituents, business alliances, and irate entrepreneurs, numerous Governmental agencies and policy offices attempted to ascertain the extent of the Government slow pay problem and recommended various solutions. In addition to the Office of Federal Procurement Policy (OFPP) recommendations cited earlier, former Secretary of the Treasury G. William Miller, on September 9, 1980, ordered the financial managers of all executive departments and agencies to strictly enforce section 8040 of the Treasury Fiscal Requirements Manual for contract payments to all small and minority enterprises. The Secretary noted in his order that despite the then current regulations many payments were still made 60-90 days late adding that, ".....these delays create financial burdens and cash management difficulties for small and minority businesses." The Secretary continued by asking the financial managers to reassess their procedures in order to assure that payments were made "when due and no later than 30 days from receipt of an invoice" unless otherwise specified in the agreement. [Ref. 15]

On September 14, 1981, David Stockman, Director of the Office of Management and Budget, issued a memo to all agency heads requesting that action be taken to improve the

Government's bill paying practices. Mr. Stockman urged that agencies take such action as necessary to:

- (a) Include specific payment terms in each contract or purchase order with standard 30-day payment terms as a norm.
- (b) Designate an individual responsible for making payments and answering related inquiries.
- (c) Include clear payment instructions and references to any necessary standard forms in each contract.
- (d) Improve compliance with Treasury Fiscal Requirements Manual.
- (e) Make timely bill paying a criterion in employee performance reports. [Ref. 11]

As a part of the General Services Administration's attempt to implement the above directives, in November 1981, GSA contracting offices were instructed to include specific payment terms in each contract and to include in all contracts or purchase orders the vendor's remittance address when it differed from the business address. It was noted that payment processing time was lost when the invoices showed a "Pay to" address different than the address on the purchase order or contract. Additionally, contracting offices were instructed to include on all contracts and purchase orders the position, title, regional location, and complete phone number and mailing address of the Financial Division Director responsible for making payments.

3. Congressional Initiatives to Improve Bill Paying Practices

Congressional action has been in the form of legislation such as House Bills HR. 2036 and HR. 4709 and the Senate versions S.30 and S.1131. Senate Bill 1131 was signed into law as Public Law 97-177 by President Ronald Reagan on Small Business Day, May 13, 1982. The provisions of PL 97-177 are provided in Appendix B. The purpose of this law as stated in the Senate Committee on Government Affairs report is to :

"...get the Government to pay its bills on time. To this end,...the bill requires all contracts for the procurement of goods and services to include due dates for payment and requires further that the United States pay interest on any amount which is not paid by the due date."

The Senate and House Bills leading to the enactment of P.L. 97-177 were designed to encourage Federal Government managers to improve their bill paying procedures by authorizing the charging of a penalty against program operating budgets when Federal agencies fail to pay their bills on time.

B. BENEFITS ASSOCIATED WITH PUBLIC LAW 97-177

1. Improved Government/Business Relations

One of the underlying intangible benefits of the enactment of the Prompt Payment Act is the reassertion of a sense of fairness in the Government's dealings with the business community. The majority of all payments to contractors by Government agencies are, in fact, made on time. However, there has always been a quite visible minority of late payments such as those that provided the impetus for many businesses to feel that the Government employs a double standard when it comes to collecting debts owed and paying its debts. In the Brooks Report on HR 4709, it was expressed that by improving its reputation as a reliable payer of its bills, the Federal Government stands to benefit greatly and to save substantial amounts of money in two ways--first by increasing the number of companies who compete for its business and second, by ending the contractor practice of inflating estimates to compensate for anticipated late bill payments. [Ref. 11]

In the statement provided by Mr. William P. Roenigk to the Senate Subcommittee on Federal Expenditures, Research, and Rules, it was stated that members of the National Boiler Council felt that many Government agencies give low priority and hence minimum staffing of adequately trained personnel to the bill-paying department. [Ref. 1] By improving its bill paying performance through the incentives provided in the Prompt Payment Act, this impression can be dispelled thus improving the Government's image.

2. Improved Cash Flow for Business Entities

Of even greater concern than the Government's reputation to the businessman is his ability to maintain adequate cash flow to conduct normal operations. An example of the problems which may occur are vividly portrayed in the comments submitted by The American Association of Nurserymen to the Senate Governmental Affairs Committee. Contained in these comments is the fact that the majority of the association's member firms are small family-owned businesses. Characteristics of these businesses are that they are highly seasonal and labor intensive. Work forces must be paid on schedule which constitutes a major problem since payroll costs run from 30-35 percent of the total volume of sales in a growing or landscaping firm. In the case where landscaping firms are engaged as subcontractors on Government projects, the general practice has been for the prime contractor to withhold 10-15 percent of the final payment until completion of the guarantee period on the plants involved. Where no prime contractor is involved, the general practice has been for the Government to withhold from 10-25 percent for the guarantee period. This period may extend for up to two years depending on the contract and type(s) of trees or plants involved. To complicate the problem even further, the landscape firm is obligated to pay its employees the

prevailing construction wage rate under the Davis-Bacon Act. This rate is often 1.5 to 2 times the normal rate for these employees. [Ref. 1]

Factors such as those illustrated above coupled with the fact that small businesses generally are forced to borrow at rates above the prime interest rate for accounts receivable financing contribute greatly to the problems of cash management and cash flow for the small business community. The intent of the Prompt Payment Act is to incentivize the Government to pay its bills in a timely manner, thus benefiting its contractors in these areas.

C. CASH MANAGEMENT AND THE PROMPT PAYMENT ACT

The enactment of the Prompt Payment Act was not achieved without its detractors. The major concern of the Administration was the cost to the Government of paying penalties on contracts more than 30 days late. This view was surfaced by Edwin Harper, Deputy Director, Office of Management and Budget when he testified that the accounting costs and the interest penalty that would be incurred when a Government agency takes more than 30 days to pay a contractor "would run into the millions of dollars." He continued that some mistakes are inevitable, owing to the complexity and volume of invoices the Government processes each year. "It takes 15,000 certifying and disbursing officers to process over 30 million invoices from 75,000 contractors involving over \$130 billion annually." [Ref. 16]

This concern takes on added dimension when viewed in respect to the national deficit and the problems of Federal cash management and cash flow. In order to appreciate the mechanics as well as the magnitude of these problems, a brief review is provided.

1. Budget Deficits and the National Debt

A budget deficit is the amount by which the Government's budget outlays exceeds its budget receipts for a given fiscal year. [Ref. 17] Simply stated, whenever the Government spends more than it takes in through taxes and other receipts, a deficit occurs. The proposed Fiscal Year 84 Presidential Budget, released 31 January 1983, calls for \$848.5 billion in spending with a projected budget deficit of \$189 billion. This is a 9 percent reduction from the projected deficit of \$208 billion in FY 83. The national debt, the results of accumulated deficits, is expected to top \$1.1 trillion by the end of FY 1984. [Ref. 18]

Deficits are hardly new in the U.S. economy. There have been 10 in the past decade, 19 in the past 20 years, 32 since World War II, and 45 since the New Deal in 1932. From 1982 to 1985, the U.S. will add almost \$500 billion to the national debt, more than it had in the preceding 30 years.

Spending as a percent of gross national product will average an unprecedentedly high 23 percent during the period 1982 through 1985, while the revenue percentage will decline to less than 20 percent. In the past two decades, spending averaged 20 percent and revenues 19 percent. As a percentage of GNP, the deficit will rise to a historic high of 4 percent in fiscal years 83 and 84 before gradually declining to 2 percent by 1985. [Ref. 19] The result of such spending and deficits have important social and economic effects, which guarantee that budget decisions will be politically important. Any legislation which is seen as increasing the Government's spending levels is subject to close scrutiny as was the case with the Prompt Payment Act.

2. The Federal Cash Management Improvement Project

In an attempt to reduce Federal debt requirements and resultant interest costs, the Federal Cash Management Improvement Project was implemented as a Presidential reorganization project on November 14, 1977. The Project sought ways to apply modern cash management techniques to the Government's massive cash flows. This included initiating cash management procedures for accelerating the processing and deposit of receipts, improving control over disbursements, and eliminating idle cash balances. In the category of controlling disbursements, the Project found major improvements resulting in savings of greater than \$145 billion annually because of

- Wider use of letters of credit to replace advances
- Improvements in the existing letter-of-credit system
- Paying contractors and vendors on the due date
- Avoiding late payment penalties. [Ref. 20]

3. Congressional Budget Office Review

Pursuant to Section 403 of the Congressional Budget Act of 1974, the proposed bills addressing delinquent payments were reviewed by the Congressional Budget Office (CBO). Among the various functions of the CBO is that of estimating costs of bills reported by House and Senate Committees. In reviewing the provisions of S. 1131 and its requirements that the Federal Government pay interest on overdue payments to providers of goods and services, it was found that the cost to the Government would be substantial. Based on the assumption of about \$100 billion in contract procurement and services in 1982 from the GAO report, it was estimated that if there was no improvement in agency bill paying, interest cost to the Government would be approximately \$100 million to \$125 million in each year between

fiscal year 1983 and 1986. This assumption also embodies CBO's projection of interest rates and assumes 18 percent of all payments would be made late. Conversely, it was estimated by CBO that if the proposed legislation results in faster payment by agencies to avoid the interest charges, such earlier payments would result in the loss of interest by the Federal Government on its cash operating balance, or higher interest on the public debt. It was found that if all payments projected to be made late were to be made on time, the cost to the Government would be approximately \$100 million to \$125 million per year, beginning in FY 83.

[Ref. 21]

D. SUMMARY

Chapter III has attempted to provide the reader with an appreciation for the intent of P.L. 97-177. The law recognized the need for improving the Government's bill paying practices and provides an incentive, although negative, for improvement. This chapter also briefly traced the historical occurrences leading to the enactment of the Prompt Payment Act and provides views both for and against.

Chapter IV will identify and briefly discuss the major provisions of the law.

IV. PROVISIONS OF PUBLIC LAW 97-177

The Prompt Payment Act represents important and far reaching changes in the Federal Government acquisition process. As with any change of this magnitude, the transition process from intent to full implementation is expected to be laden with difficulties. One of the basic steps in the implementation of the law is an understanding of its provisions. This chapter will delineate and examine in detail some of the key areas.

A. INTEREST PENALTIES ON LATE PAYMENTS

With the phrase, "To require the Federal Government to pay interest on overdue payments, and for other purposes", the Prompt Payment Act materially influences the bill-paying relationship of the Federal Government and its providers of goods and services. As indicated in the opening lines, the most outstanding and perhaps controversial aspect is the payment of interest.

Sec. 2(a) (1) In accordance with regulations prescribed by the Director of the Office of Management and Budget, each Federal agency which acquires property or services from a business concern but which does not make payment for each such complete delivered item of property or service by the required payment date shall pay an interest penalty to such business concern in accordance with this section on the amount of the payment which is due. [Ref. 22]

1. Policy

The regulations cited above were promulgated by the Office of Management and Budget on August 19, 1982 as Circular A-125 which prescribes policies and procedures to

be followed by executive departments and agencies in paying for property and service acquired under Federal contract. In delineating the responsibilities of agency heads, Circular A-125 states:

"Each agency head is responsible for assuring timely payments and the payment of interest penalties where required. Each agency head will ensure internal instructions, as necessary, to implement this Circular by October 1, 1982. Such instructions will include provisions for determining the cause of any interest penalties incurred, and for necessary corrective or disciplinary action. Inspector General and internal auditors will make reviews of implementation, as they and the agency head deem appropriate." [Ref. 23]

2. Applicable Interest Rates

Interest entitlements to the contractor as stated in the Act are computed at the rate determined by the Secretary of the Treasury for interest payments under Section 12 of the Contracts Disputes Act of 1978, Public Law 95-565 (41 USC 611) which reads as follows:

Section 12 Interest on amounts found due contractors on claims shall be paid from the date the contracting officer receives the claim pursuant to section 6 (a) from the contractor until payment thereof. The interest provided for in this section shall be paid at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41 (Stat. 97) for the Renegotiation Board. [Ref. 24]

Since the Renegotiation Board is no longer in existence, the Department of the Treasury publishes the current rate of interest in accordance with section 2(b) (1) of Public Law 97-177. This rate is promulgated semiannually on or about 1 January and 1 July in the fiscal service section of the Federal Register. On December 23, 1982, the applicable rate published for the period beginning January 1, 1983 and ending on June 30, 1983 was 11 1/4 per centum per annum or a daily rate of 0.003082. [Ref. 25]

3. The Grace Period Concept

The original House version of the Prompt Payment Act (H.R. 4709), introduced by Congressman Jack Brooks (D-Tex) as approved by the House Government Operations Subcommittee on Legislation and National Security stipulated that bills would be paid within 30 days or interest charges would be incurred. This stipulation lead to the Administration opposing the bill without modification. The suggested modifications included: (1) allowing a "reasonable grace period (30 days)", after the initial 30-day payment period had expired before making the Government liable for interest, (2) applying the interest penalty only in those instances where payment was late through no fault of the vendor, and (3) authorizing contracting officers to expedite penalty payments which did not exceed \$1,000 or 15% of the face value of the contract, whichever was less. These recommendations were offered by OMB Deputy Director Edwin L. Harper during his testimony. Although more supportive of the bill, GAO's Milton Socclar suggested that the bill provide for payment of interest only upon receipt of a claim from a contractor within a designated time after payment was due. Such a provision was intended to discourage contractors from submitting claims involving minor amounts or delays and thus limit the use of Government resources to compensate vendors for more serious delays. Additionally, it was recommended that the Government's interest liability be limited to 120 days beyond notification by a contractor that payment had not been received. [Ref. 16]

By way of compromise, the Brooks bill was amended by adding a 15-day grace period to the basic 30-day payment period. Under the grace period concept, the Government would not incur any interest charges on payments made between the 31st and 45th days after receipt of a "proper

invoice". But for payments made on the 46th day or later, interest would be accrued beginning with the 31st day, as if there had been no grace period. This concept is embodied in section 2(b) (1) of the Act which states in part:

Interest penalties on amounts due to a business concern under this Act shall be paid to the business concern for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made, except that no interest penalty shall be paid if payment for the complete delivered item of property of service concerned is made on or before (A) the third day after the required payment date, in the case of meat or a meat food product described in subsection (a) (2) (B) (i); (B) the fifth day after the required payment date, in the case of an agricultural commodity described in subsection (a) (2) (B) (ii); or (C) the fifteenth day after the required payment date, in the case of any other item.

4. Example of Interest Penalty Computation

As detailed earlier, interest penalties remaining unpaid for a 30-day period are added to the principal amount owed the business concern, and additional interest penalties will be computed on the total debt including accrued interest. Interest would continue to accrue and be added to the principal amount each 30-days until (1) the debt and interest is paid, (2) the vendor files a claim under the Contract Disputes Act, or (3) until one year has elapsed. Interest is computed based upon a 365-day calendar year. Table I is an example of interest computation as promulgated by Headquarters, U.S. Air Force Accounting and Finance Center. Table II is the optional method prescribed [Ref. 28]. For comparison purposes, the formula for computing interest as described by NAVCOMPTNOTE 7200 is presented in Tables III and IV and a sample computation using Navy procedures is found in Table V.

TABLE I
Air Force Interest Computation Method

Amount subject to interest	\$12,000.00
Rate of interest per day (Effective January 1, 1983)	11.25%
Multiply amount by interest rate (12,000 x 0.1125)	= \$ 1,350.00
Rate of interest per day (1,350.00/365)	= \$ 3.6986
Number of days payment was late	15
Interest payable (15 x 3.6986)	= 55.48
Total amount due contractor (12,000.00 + 55.48)	= \$12,055.48

TABLE II
Optional AF Interest Computation

Current daily rate of interest expressed as a decimal equivalent (11.25%/365)	= 0.0003082
Multiply amount subject to interest by daily rate of interest (12,000.00 x 0.0003082)	= \$3.6986
Multiply by number of days payment was late (3.6986 x 15)	= \$55.48
Total amount due contractor (12,000 + 55.48)	= \$12,055.48

5. Interest Penalty Requirements Summary

The following summarizes the requirements and limitations of interest penalties associated with the Prompt Payment Act:

TABLE III
Navy Interest Computation Method

Formula 1-May be used when compound interest tables are available.

$P \times dri$ = interest payable, where

P = Principal = net amount payable to the
vendor prior to adding interest.

dri = daily rate of interest from table
promulgated upon each change to
the Treasury's prescribed interest rate.
The table takes compounding into account.

a. An interest penalty will be paid automatically when all of the following conditions are met:

---There is a contract or purchase order with a business concern.

---Federal acceptance of property or services has occurred and there is no disagreement over quantity, quality, or other contract provisions.

---A proper invoice has not been received or the agency fails to give notice that the invoice is not proper within 15 days of receipt of an invoice (3 days for meat or meat products, and five days for perishable agricultural commodities).

b. Interest penalties are not required when payment is delayed because of a disagreement between a Federal agency and a business concern over the amount of the payment or other issues concerning compliance with the terms of a contract; nor are they required when payments are made solely for financing purposes (such as progress payments), payments are made in advance, or for a period when amounts are withheld temporarily in accordance with

TABLE IV

Optional Navy Interest Computation

Formula 2-May be used when interest table is not available.

$P(1 + i/12)^n - P + P + (P(1 + i/12) - P)(i)(z) =$
interest payable, where,

P = principal net amount payable to the vendor
prior to adding on interest

i = interest rate = as prescribed by Treasury
expressed in decimal form

n = number of full periods, e.g., number of days
divided by 30

z = number of residual days (number of days
less than a 30 day period)

Note that $P(1 + i/12)^n - P =$ compound interest
 $P + P(1 + i/12)^n - P =$ residual interest

the contract. Claims concerning disputes, and any interest that may be payable with respect to the period while the dispute is being settled, will be resolved in accordance with the provisions of the Contract Disputes Act of 1978.

c. Interest penalties will not continue to accrue after one year.

d. Interest penalties of less than one dollar need not be paid.

TABLE V
Navy Computation Example

Principal	\$500.00
Julian Pay Date	3251
Julian Due Date	2200

	326 days

Interest rate = 15 1/2%
 $n = 10$, i.e., $326/30 = 10$, the remainder becomes $z = 26$

Calculations:

Formula 1 $P \times dri = \text{interest payable}$
 $500 \times .1496666 = \$74.83$

Formula 2

$$\begin{aligned}
 & 500 (1+.155)^{10} / (.155)^{(26)/(360)} - 500 + 500 (1+.155/12)^{10} - 500) \\
 & -500 (1.012917)^{10} / (.0111194) - 500 + 500 + (500 + (500 (1.012917)^{10} \\
 & -500) (1.135942) - 500 + 500 + (500 (1.136942) \\
 & 68.47 + (568.47) / (.0111194) \\
 & 68.47 + 6.36 = \$74.84
 \end{aligned}$$

The applicable provisions concerning interest penalties and discounts will be discussed in the next section.

B. LIMITATION OF DISCOUNT PAYMENTS

The Prompt Payment Act covers acquisitions made on or after October 1, 1982, which includes the entire process of contracting, delivery, receipt and payment as defined in P.L. 96-83, The Office of Federal Procurement Policy. In addition to requiring the Government to pay an interest penalty on late payment, Section 3 of the Act requires the

payment of interest on improperly taken discounts, i.e., those discounts taken which are too large an amount or after the expired time for the discount. In the GAO study of Government bill paying practices, it was found that some contractors stopped offering discounts. One hundred contractors reported that they no longer offered discounts to Federal agencies even though they did at one time. In response to the GAO question "Does your firm offer discounts to Federal agencies?", of 937 respondents, 400 firms, or 43 percent answered affirmatively while 537 firms, or 57 percent responded negatively. A total of 950 firms were polled. The principal reasons given for discontinuing discounts were that (1) offering them seldom made any difference in Federal payment performance and (2) too many discounts were taken after the discount period had expired. The responses to the GAO questionnaire concerning discounts are shown in table VI. [Ref. 14]

1. Navy Discount Procedures

As an aid in understanding the problems of improper discounts, this section will briefly review the discount determination procedures in the Navy. Navy procedures stipulate that when a contract or any other written purchase agreement contains a provision for discounts for prompt payment, the discount will be deducted if accepted and earned. Discounts may be offered to the purchasing activity after contract award by means of letter, telegram or by notation on the bill rendered by the vendor. Here again, it is stipulated that the discount will be taken if earned. It is further stated that "all offers of discount appearing on dealers' bills whether printed, typed, written, rubber stamped, etc., regardless of the type of purchase, will be considered as authorizing the deduction of discounts if earned." It is important to note that in making the deter-

TABLE VI
GAO Report Discount Questions Responses

Question 10 How often have Federal agencies taken discounts offered by your firm?

<u>Frequency</u>	<u>firms</u>	<u>percent</u>
rarely, if ever (5% or less)	59	15%
Occasionally (about 25%)	32	8
As often as nct (about 50%)	43	11
Frequently (about 75%)	45	11
very often (95% or more)	215	55
No response	6 ---	-- ---
Total	400	100%

Question 11 How often have Federal agencies taken discounts after the discount period has expired?

<u>Frequency</u>	<u>firm</u>	<u>Percent</u>
Rarely	172	43%
Occasionally	97	24
As often as nct	30	8
Frequently	43	11
Very often	57	14
No response	1 ---	-- ---
Total	400	100%

mination of discount applicability, the essential element is that discounts are to be taken "if earned". [Ref. 5]

In making the determination of the discount period, unless otherwise specifically provided in the purchase agreement, the discount period is considered to begin on the date the material is delivered or the services performed, or on the date a proper invoice is received at the activity designated on the purchase document as the activity to which the invoice is to be mailed, whichever is later. In those cases where no discount provision is included in the purchase agreement, the discounts are to be taken in strict compliance with the offer. In such instances, if the offer on the invoice fixes a date for the beginning or end of the discount period, the date fixed applies. The start of the discount period may be delayed by fault of the supplier because of the necessity of returning invoices for correction or delay in the execution and return of the contract. In fixing the latest date on which payment may be made to earn the discount, one would add the number of days allowed to the date the discount begins. The date thus determined, converted when necessary to a day in a subsequent month, fixes the latest on which payment must be made to earn the discount. As an example, if a dealer's bill is received 13 August and material is received 15 August, the discount period begins 15 August and if 10 days are allowed, 25 August is the latest date on which payment is to be made to earn the discount. In the situation where the discount period begins 28 August and 10 days are allowed, the latest date to earn discount is 7 September. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Government check. If a discount period expires on a Sunday or holiday, the discount is earned if payment is made on the next business day. However, if discount expires on a nonworking day other than a Sunday or

holiday as, for example, a Saturday designated as a regular nonworkday, discount is not earned for payment on the next workday. In those situations, payment must be made on a day preceding the date on which the discount period expires. If a discount is offered for payment by "tenth proximo", the discount is earned if payment is made by the 10th of the month following the month in which the material was delivered, or the month in which the dealer's invoice was received, whichever occurs in the later month. Thus, if both material and dealer's bill are received in August, the discount is earned for payment by 10 September. However, if a dealer's bill is received in August and the material is received in September, the discount is earned for payment by 10 October. [Ref. 5]

Discounts are computed on the total amount of payment requested by the dealer's bill approved for payment for settlement, including such items as taxes and freight, whether included in the contract price or shown as separate items on a dealer's bill unless otherwise specifically stated in the contract or order. A prompt payment discount offered in a contract, order or dealer's bill for items priced on an FOB origin basis will not be applied to transportation charges. [Ref. 5]

2. Corrective Action for Improper Discounts

Unfortunately, even with such well defined guidelines and procedures as those outlined above, business concerns still report the taking of unearned discounts. A large wholesaler in Texas wrote Senator John Tower:

"Last fall we gave up trying to do business with agencies of our Federal Government and proceeded to take steps to start closing the accounts that we had with some of these agencies. The primary problem is that these agencies do not pay their bills within the discount period, however, they take the discount anyway, even though it is not earned... With the cost of money today, that makes our dealings with the Government unprofitable to begin with." [Ref. 26]

In the testimony given before the Brooks committee by Congressman Ron Wyden (Dem-Or.), it was stated that the "slow payment situation is further aggravated by the Federal Government taking discounts...even though the Government's payments were well beyond the terms qualifying it for a discount." [Ref. 26]

To combat this problem, the Prompt Payment Act states:

Section 3 (a) If a business concern offers a Federal agency a discount from the amount otherwise due under a contract for property or services in exchange for payment within a specified period of time, the Federal agency may make payment in an amount equal to the discounted price only if payment is made within a specified period of time.

(b) Each agency which violates subsection (a) shall pay an interest penalty on any amount which remains unpaid in violation of such subsection. Such interest penalty shall accrue on such unpaid amount in accordance with the regulations prescribed pursuant to section 2, except that the required payment date with respect to such unpaid amount shall be the last day of the specified period of time described in subsection (a).

This essentially states that if an improper discount is taken, interest will accrue on the unpaid balance commencing with the day after the expiration of the discount period. If the payment is not corrected prior to the end of the 15-day grace period, interest will be payable on the unpaid balance. It is important to note that a discount that is advantageous to the Government still remains a high priority when processing and paying invoices. Properly taken discounts save the Government money and are an integral part of effective cash management.

C. COMPLIANCE MONITORING

Responsibility for monitoring compliance with the provisions of the Prompt Payment Act has been delegated to the Director of the Office of Management and Budget, with

Congressional oversight. Within sixty days after the conclusion of the fiscal year, each Federal agency is required to submit to the Office of Management and Budget a detailed report on any interest penalty payments made under the Act. This report must include (1) the number of interest penalties paid, (2) the amount of interest penalties paid, (3) the relative frequency, on a percentage basis, of payments made 5 days or more before the due date, except where cash discounts were taken, (4) the reasons that interest penalties were incurred and (5) an analysis of the progress made from previous years in improving the timeliness of payments. In accordance with OMB Circular A-125, "in order to minimize the cost of reporting, statistical sampling may be used to derive the information above." [Ref. 23]

Department of Defense monitoring and reporting procedures were promulgated by the Assistant Secretary of Defense (Comptroller) on September 16, 1982. Beginning with fiscal year 1983, each military Department, Defense Agency or other Defense Component is required to file with the Washington Headquarters Service (WHS), Directorate of Information, Operations and Reports, Washington D.C., a consolidated Prompt Payment Act Report. This report is required not later than 50 days after the conclusion of each fiscal year. A copy of the Prompt Payment Report (Report Control Symbol DD-Comp(A) 1607) and Standard Reasons for Late Payments are provided in Appendix C. The Washington Headquarters Service is charged with consolidating and transmitting all reports for the Department of Defense to the Office of Management and Budget. [Ref. 27]

As a means of Congressional oversight, the Act requires the Director of CMB to submit to the Committee on Governmental Affairs, the Committee on Appropriations, and the Committee on Small Business of the Senate and to the

Committee on Governmental Operations, the Committee on Appropriations, and the Committee on Small Business of the House of Representatives a report on Federal agency compliance. This summary report is due within 120 days after the conclusion of each fiscal year.

D. SUMMARY

This chapter has attempted to highlight and analyze some of the key areas of the provisions of Public Law 97-177. The areas of interest determination, improper discounts and reporting were analyzed in detail and are seen by the authors as those areas that have been the most controversial and will have the greatest impact on both Government and the business community. Policy guidance from the Office of Management and Budget as well as interest applicability and interest computation was examined. The area of discounts was examined by way of reviewing current Navy procedures in light of existing problems with the taking of improper discounts and the provisions of the law.

The Prompt Payment Act was hailed as a major step forward toward improving Government bill paying practices and Government/business relations. However, its full impact will not be known until the end of fiscal year 1983 when Government-wide Prompt Payment Reports are compiled and analyzed.

V. AN ANALYSIS OF IMPLEMENTATION PROCEDURES

The key areas of the Prompt Payment Act provisions are but the foundation upon which the implementation procedures are based. As in any enactment of new laws, the success of the Act itself depends in large part upon the success of the implementation procedures. This chapter will delineate the major implementation regulations promulgated by the Office of Management and Budget (OMB) and the final interpretation and implementation of those procedures by the armed services. The Navy and Air Force implementation methods will be analyzed as well as the problems encountered with the Government's cash management policy.

A. OFFICE OF MANAGEMENT AND BUDGET IMPLEMENTATION GUIDANCE

As emphasized in Chapter IV, the Prompt Payment Act required that OMB initiate implementation regulations which led to the creation of OMB Circular No. A-125 stating the policies and procedures which were to be used in paying for property and services acquired under Government contract. Each agency head was made responsible for assuring timely payment and the payment of interest penalties where required. [Ref. 23] The actual regulations to implement Circular A-125 were to be internally established and promulgated by each agency. OMB Circular A-125 provided specific standards requiring compliance by all concerned. The four primary areas were:

- 1) Payment Standards
- 2) Determining Due Dates
- 3) Interest Penalties Requirements
- 4) Reporting Requirements. [Ref. 23]

Each Agency established implementation procedures to comply with their own internal requirements. Circular A-125 states that payments are to be made as close as possible to but not beyond the due date. To insure any interest penalties are adequately documented, specific information was to be included in contracts, invoices, and receiving reports. The information required to insure accurate documentation is:

1) Contracts must include the following payment provisions:

- (a) payment due date(s).
- (b) separate payment dates if partial payment is authorized.
- (c) if applicable, a statement that the special payment provisions of Packers and Stockyard Act of 1921 or the Perishable Agriculture Commodities Act of 1950 applies.
- (d) a stated inspection period following delivery, where necessary, for Government acceptance of property or services.
- (e) names, telephone numbers, and complete mailing addresses of officials of the business concern and of the designated payment office. [Ref. 23]

2) Invoices must include:

- (a) business name and invoice date.
- (b) contract number, or other authorization for delivery of property or services.
- (c) description, price, and quantity of property and services actually delivered or rendered.
- (d) shipping and payment terms.
- (e) other substantiating documentation or information as required by the contract.
- (f) name, title, telephone number, and complete mailing address of the responsible official to whom payment is to be sent.

A notice of an apparent error, defect, or impropriety in an invoice will be provided to a business concern within 15 days of receipt of an invoice. [Ref. 23]

3) A receiving report must include:

- (a) contract or authorization number.
- (b) product or service description.
- (c) quantities received, if applicable.

- (d) date(s) property or services accepted.
- (e) signature, printed name, title, telephone number, and mailing address of the receiving official.
[Ref. 23]

Receipt and acceptance procedures are to be executed as promptly as possible. Receiving reports are to be received by the designated paying office by the fifth business day after acceptance.

Due dates are determined to be the thirtieth day after receipt of a proper invoice. Exceptions to this are:

- (a) when a specific payment date is provided for in the contract--with the specific date to be the deadline for payment.
- (b) when a time discount is taken, payment will be made as close to but not later than, the discount date.
- (c) payment for meat or meat food products will be made as close to but not later than the seventh day after date of delivery.
- (d) payment for perishable agriculture commodities will be made no later than the tenth day after the date of delivery. [Ref. 23]

Interest penalty constraints and reporting requirements were discussed in detail in Chapter IV above. The following section will review major differences between various agencies' implementation procedures.

B. IMPLEMENTATION PROCEDURES

All Government agencies have complied with the intent of the OMB Circular A-125. Primary differences have occurred, however in the reporting requirements of each agency. The Department of Defense has requested that each defense component will submit a consolidated report of any interest payments made under the Prompt Payment Act during the preceding fiscal year. [Ref. 27] The Navy has taken an additional step and now requires a monthly report from all disbursing activities which pay contractors with appropriated funds. The report will allow management officials the ability to determine the relative frequency of the interest

payments and take corrective action as required. Nonappropriated fund (NAF) activities are directed to review monthly NAF financial statements regarding late payment penalty and take corrective actions. These activities will submit an annual report to the Secretary of the Navy (Comptroller). [Ref. 2] Informal sources from the Defense Contract Administration Services Regions indicate they have been required to implement sixteen different reports to assist in maintaining control of information regarding invoices, interest payments, and reporting procedures established by the Prompt Payment Act.

Another area of difference is the information required to be included in the certification of every invoice submitted for payment. Different paying offices require essentially the same information but with individual additions/deletions depending upon internal reporting processes. Appendix D and E are examples of the type of certification requirements currently being utilized.

In looking at the different services, the procedures are a duplicate of OMB Circular A-125 requirements. The primary difference is not so much in the actual compliance of the Prompt Payment Act procedures as much as the methods utilized to insure accurate, understandable implementation by field activities.

The Secretary of Defense promulgated the requirements as specified in the OMB Circular A-125. The service secretaries or their assistants disseminated the instructions pertaining to their respective services. In analyzing the messages, memorandums, and letters utilized to institute the new payment procedures the ability to express confidence in and support of the Prompt Payment Act was best represented by the Air Force. The positive nature in which the implementation procedures were generated and the emphasis placed upon the offer of assistance when required was singularly

unique in the armed services. The messages initiated prior to the 1 October 1982 commencement date, detailed new payment standards and discussed new contract, invoice, and reporting requirements. Most noteworthy, however, was the discussion concerning the ever present "gray areas", the instances wherein partial payment could be authorized.

"...Pay what you can to avoid the payment of interest. Provide the vendor with the specifics of why we can't pay the full amount, e.g., items not delivered, delivery discrepancy, disputed amount, etc. Tell the vendor what must be done before balance of payment can be made."
[Ref. 28]

The preceding statement discusses the possible partial payment situation but more importantly emphasizes the necessity for talking to the vendors to insure that avenues of understanding remain open. This point is pronounced further:

"...(the Air Force) will not compromise paying controls or standards to avoid payment of interest penalties. But we must work closer with vendors than ever before."
[Ref. 28]

In addition all commands were encouraged to submit comments and recommendations evaluating the impact of the Prompt Payment Act upon the resources available and the type of information required in reports. The overall effect was one of positive, supportive understanding of the new laws and for the reasons which led to its enactment.

This is not to say that the other services were not supportive of the new payment procedures. The Navy and Army directives were specific in their discussion of the changes the Prompt Payment Act instituted. However, the requests for recommendations for improvements/changes, the discussion of "partial payments", the continued emphasis on contractor/paying office interface were not included within

the promulgated directives. These additional areas of discussion, though not imperative to the implementation of the Prompt Payment Act, are needed if the success of the Prompt Payment Act is to be guaranteed. Vendors and Government Contracting Officers as well as Government Paying Officers must maintain a cooperative attitude lest the situation become an adversary relationship with disastrous results.

C. CASH MANAGEMENT POLICY

In July 1982, the Office of Management and Budget (OMB) published a proposed Circular, "Timely Payments", for comments concerning the guidance OMB would provide to agencies on the proper timing of payments to contractors. The comments received from Congress, professional and business associations, Government agencies, and universities argued that the Prompt Payment Act was to solve the problems of late payment and that any guidance from OMB should not discourage agencies from paying earlier than required by law or contract. [Ref. 29]

This article was an attempt to gain opinions regarding the effect the Prompt Payment Act would have upon the governmental cash management policies and the effect a change to that policy would have in the business world. Previously standard payment clauses provided that payment be made upon receipt of a proper invoice. Treasury regulations, however, require payment to be held for approximately 27 days after receipt of a proper invoice, unless a specific date is established in the contract. [Ref. 30] With the enactment of the Prompt Payment Act, there was confusion between the Treasury's cash management policies and the "required payment dates" specified in the Act itself. OMB Circular A-125 states:

"Payment will be made as close as possible to, but not later than the thirtieth day after receipt of a proper invoice...except as follows:
--when a specific payment date is provided...
--when a time discount is taken...." [Ref. 23]

The OMB directive encompasses the Treasury cash management policy, even though the cash management policy has nothing to do with the Prompt Payment Act. [Ref. 30]

Initially, many changes to the DAR payment clauses, and anticipated requirements for additional personnel to manage invoice submissions for payment were thought to be needed in order to maintain the thirty day payment limitations. A solution was adopted by the DAR Council, the Department of Defense Contract Finance Committee, and the Assistant Secretary of Defense (Comptroller). The agreement was that if a specified date for payment is in the contract, it is both the "payment due date" and the "required payment date". If the payment clause contains such terms as "payment... made upon submission of a proper invoice", then payment will be due five days after receipt of a proper invoice and payment will be required no later than thirty days after receipt of a proper invoice. This agreement will prevent payments from being arbitrarily delayed because of OMB Circular A-125. [Ref. 30]

D. SUMMARY

This chapter has detailed the differences in the implementation of the Prompt Payment Act between the various services. Though similar in most aspects, the directives initiating the Act and the reporting requirements for each agency have been the distinctive areas of review. The Cash Management Policy was discussed as to the confusion that was encountered when the Treasury's Cash Management Policy was integrated with the Prompt Payment Act. The agreement

between governing bodies as to the interpretation of the Act and the Treasury's cash management policy was provided with a explanation of the terminology to be used.

VI. CONCLUSIONS AND RECOMMENDATIONS

A. CONCLUSIONS

In obtaining an in-depth research file, contact was made with Navy, Army, and Air Force activities. The conversations that ensued, in almost all cases, revealed that the Prompt Payment Act was considered to be a fair and reasonable effort to effect more timely payment for the Government contractor. The anticipated problems focused on the administrative procedures required to maintain control over the interest penalty data.

Government contractors have frequently voiced complaints concerning late payments and the negative effect that late payments have upon their cash flow and general financial health. The informality of commercial business practices allows for more interaction and arrangement of payment procedures to ensure that both parties are satisfied. This ease of doing business was carried forward into the establishment of the Uniform Commercial Code (UCC), however, this concept of informality failed to be incorporated into the Defense Acquisition Regulation.

The Government, being in the position of the sovereign power, must establish regulations to ensure fairness and equality to all concerned and to cover an infinite number of future contracting situations. To increase frustrations, the payment of public funds requires such detailed accounting requirements that delays in payment seem inherent in the system. Correspondence from different agency heads directed to subordinates attempting to implement more efficient payment practices created the desire by processors to provide timely payment. Unfortunately the impetus to

continue the high degree of timely payment proved extremely difficult to maintain.

With the enactment of the Prompt Payment Act, the incentive to pay in a timely manner was provided. With any new legislation there are problems encountered initially which require careful attention. The Prompt Payment Act, though based upon GAO studies, businessmen's testimonies, and countless Congressional hearings, has encountered a number of difficulties in obtaining full implementation.

One area which is expected to entail problems is that interest penalties must be included both in the payment to the contractor and as an expense to the Government appropriations through which the contract was executed. This, in essence, increases the possibility of over-obligation of funds at the activity level of diverting funds from the acquisition of goods and services to financing penalty interest payments in those cases where the desired efficiencies for which the Act was intended is not achieved. In those cases where interest penalty amounts are not monitored, the resultant administrative burden will be small compared to the embarrassment encountered by an agency where over-obligation of the budget is due to inattentiveness or inefficiency.

More difficulty is foreseen in monitoring the discount payment process. Discounts are authorized to be taken when earned. Therefore, when submitted within the discount period, the activity will charge the specific appropriation for a specific amount. If the associated invoice is delayed, for whatever reason, the paying activity will compute a different, larger total cost, thus creating an obligation difference between the financial records of the original purchasing command and the appropriation totals. Commands will, therefore, have additional "difference listings" to reconcile. Because of the traditional heightened

level of procurement activity associated with the end of the fiscal year, particularly in the small purchase area, the opportunity for over-obligation will increase during this period. Recognition of the possibility of incurring interest penalties must be given high level management attention if proper control of interest payment is to be realized.

B. RECOMMENDATIONS

1. Agency Standardization

The actual delegation of implementation authority has been promulgated by the Office of Management and Budget by OMB Circular A-125. Government agencies and departments were found to have established specific guidelines in keeping with A-125 directives tailored to the needs of subordinate activities. Although all implementation procedures examined demonstrated the ability to conform to desired standards, the clarity of explanation of procedures varied widely as exemplified in Tables II through V.

The Prompt Payment Act is designed to increase effectiveness at all levels of the bill paying process. This improvement in Federal payment performance requires standardization in procedures not only to enhance efficiency but also to eliminate errors which, with the penalty provisions of the Act, can prove costly. Standardized methods and procedures should be established in order to ensure Government-wide conformity to the provisions of the Prompt Payment Act and to ensure that personnel tasked with the administrative and clerical responsibilities can effectively perform their assigned functions. Measurement standards should be established not only to ascertain the impact of the Act as a whole but to ensure that prescribed implementation procedures are effectively being carried out.

2. Government/Contractor Interface

The implementation of the Prompt Payment Act provides an opportunity to emphasize the importance of contractor and Government interface and to improve the reputation of the Government in the area of bill paying. Often, direct interchanges can be utilized to improve this vital relationship and as a demonstration that the Act is seen as a dynamic document which will be utilized not as a tool of punishment for Government agencies but for the benefit of all concerned.

In addition to the written material available to contractor personnel, implementation conferences with contractors should be conducted. Establishment of this rapport is considered vital in order to assist vendors in performing their requirements concerning the Act. Many paying activities have already established customer service contact points to answer inquiries concerning the impact of the Act on both the Government and the vendor. This function in addition to face-to-face dialogue is viewed as essential to smooth implementation.

3. Post-Implementation Study

In making payments, Federal agencies have two obligations. They are required to pay bills when due and at the same time they must make sure they receive the goods and services for which they pay. As concluded by the GAO study on the Government's bill payment performance, agencies are doing well in the latter respect. The enactment of the Prompt Payment Act is aimed at correcting the problems of slow and delinquent payments. In the short time which has elapsed since the enactment of the legislation, it is difficult to collect meaningful statistics concerning the impact of Public Law 97-177 on the bill paying process to this

point. It is therefore recommended that a follow-on study be conducted to analyze the compliance reports generated by each Federal agency as required by OMB Circular A-125. This analysis should seek to determine not only the extent of late payments but also the reasons activities are unable to comply. In addition, this study should recommend action to improve agency compliance.

The Prompt Payment Act, Public Law 97-177, is the result of the recognition by both Government and private sector leaders of a long standing problem of late bill payment. The legislation in itself does not solve the problem of slow Government payment but rather is dependent upon the acceptance of the spirit and intent of the law by all concerned. With the legal requirements now in place, the major concern must be that implementation is accomplished expeditiously and comprehensively. With the opportunity now available to develop more open channels of communication between contractors and Government entities, and with accurate, timely, and standardized implementation procedures, a more effective and efficient acquisition process can evolve.

APPENDIX A
SUPPORTING ORGANIZATIONS OF PUBLIC LAW 97-177 PASSAGE

- * National Audic-Visual Association (NAVA)
- * National Office Products Association (NOPA)
- * National Micrographics Association (NMA)
- * National Association of Wholesaler-Distributors (NAW)
- * Independent Media Producers Association (IMPA)
- * Association of Reproduction Material Manufacturers (ARMM)
- * Coalition for Common Sense in Government Procurement (CCSGP)
- * Media Educational Sales Association (MESA)
- * National Meat Association (NMA)
- * American Association of Nurserymen (AAM)
- * American Logistics Association (ALA)
- * Business Products Council Association (BPCA)
- * Business and Institutional Furniture Manufacturer's Association (EIFMA)
- * Association of Editorial Business, Inc. (AEB)
- * National Association of Manufacturers (NAM)
- * American Meat Institute (AMI)

- * Association of the Wall & Ceiling Industries-International (AWCII)
- * Associated General Contractors (AGC)
- * National Broiler Council (NBC)
- * Latin American Manufacturers Association (LAMA)
- * Automotive Service Industry Association (ASIA)
- * Automotive Parts Rebuilders Association (APRA)
- * Committee on Federal Contracting Practices (CFCP)
- * United Fresh Fruit & Vegetable Association (UFPVA)
- * National Association of Meat Purveyors (NAMP)

APPENDIX B

THE PROMPT PAYMENT ACT--PUBLIC LAW 97-177

Ninety-seventh Congress of the United States of America

AT THE SECOND SESSION

*Began and held at the City of Washington on Monday, the twenty-fifth day of January,
one thousand nine hundred and eighty-two*

An Act

To require the Federal Government to pay interest on overdue payments, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Prompt Payment Act".

INTEREST PENALTIES ON LATE PAYMENTS

SEC. 2. (a)(1) In accordance with regulations prescribed by the Director of the Office of Management and Budget, each Federal agency which acquires property or services from a business concern but which does not make payment for each such complete delivered item of property or service by the required payment date shall pay an interest penalty to such business concern in accordance with this section on the amount of the payment which is due.

(2) Such regulations--

(A) shall specify that the required payment date shall be--
(i) the date on which payment is due under the terms of the contract for the provision of such property or service; or

(ii) thirty days after receipt of a proper invoice for the amount of the payment due, if a specific date on which payment is due is not established by contract;

(B)(i) in the case of any acquisition of meat or of a meat food product, as defined in section 2(a)(3) of the Packers and Stockyards Act, 1921 (7 U.S.C. 182(3)), shall specify a required payment date which is not later than seven days after the date of delivery of such meat or meat food product; and

(ii) in the case of any acquisition of a perishable agricultural commodity, as defined in section 1(4) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a(4)), shall specify a required payment date consistent with requirements imposed pursuant to such Act;

(C) shall specify separate required payment dates for contracts under which property or services are provided in a series of partial executions or deliveries, to the extent that such contract provides for separate payment for such partial execution or delivery; and

(D) shall require that, within fifteen days after the date on which any invoice is received, Federal agencies notify the business concern of any defect or impropriety in such invoice which would prevent the running of the time period specified in subparagraph (A)(ii).

(b)(1) Interest penalties on amounts due to a business concern under this Act shall be paid to the business concern for the period

beginning on the day after the required payment date and ending on the date on which payment of the amount due is made, except that no interest penalty shall be paid if payment for the complete delivered item of property or service concerned is made on or before (A) the third day after the required payment date, in the case of meat or a meat food product described in subsection (a)(2)(B)(i); (B) the fifth day after the required payment date, in the case of an agricultural commodity described in subsection (a)(2)(B)(ii); or (C) the fifteenth day after the required payment date, in the case of any other item. Interest shall be computed at the rate determined by the Secretary of the Treasury for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611). The Secretary of the Treasury shall publish each such rate in the Federal Register.

(2) Any amount of an interest penalty which remains unpaid at the end of any thirty-day period shall be added to the principle amount of the debt and thereafter interest penalties shall accrue on such added amount.

(c) This section does not authorize the appropriation of additional funds for the payment of interest penalties required by this section. A Federal agency shall pay any interest penalties required by this section out of funds made available for the administration or operation of the program for which the penalty was incurred.

(d)(1) Any recipient of a grant from a Federal agency may provide in a contract for acquisition of property or services from a business concern for the payment of interest penalties on amounts overdue under such contract, except that—

(A) in no case shall an obligation to pay such interest penalties be construed to be an obligation of the United States, and

(B) any payment of such interest penalties shall not be made from funds provided to the grant recipient by a Federal agency, nor shall any non-Federal funds expended for such interest penalties be counted toward any matching requirement applicable to that grant.

(2) Such interest penalty payments shall be made under such terms and conditions as agreed to by the grant recipient and the business concern, consistent with the grant recipient's usual business practices and applicable State and local law.

LIMITATION ON DISCOUNT PAYMENTS

SEC. 3. (a) If a business concern offers a Federal agency a discount from the amount otherwise due under a contract for property or services in exchange for payment within a specified period of time, the Federal agency may make payment in an amount equal to the discounted price only if payment is made within such specified period of time.

(b) Each agency which violates subsection (a) shall pay an interest penalty on any amount which remains unpaid in violation of such subsection. Such interest penalty shall accrue on such unpaid amount in accordance with the regulations prescribed pursuant to section 2, except that the required payment date with respect to such unpaid amount shall be the last day of the specified period of time described in subsection (a).

CLAIMS; RELATION TO OTHER LAW

SEC. 4. (a)(1) Claims for interest penalties which a Federal agency has failed to pay in accordance with the requirements of section 2 or 3 of this Act may be filed under section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605).

(2) Interest penalties under this Act shall not continue to accrue (A) after the filing of a claim for such penalties under the Contract Disputes Act of 1978, or (B) for more than one year.

(3) Paragraph (2) shall not be construed to preclude the accrual of interest pursuant to section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) after interest penalties have ceased accruing under this Act, and interest pursuant to such section may accrue on both any unpaid contract payment and on the unpaid interest penalty required by this Act.

(b) Except as provided in section 3 with respect to disputes concerning discounts, this Act shall not be construed to require interest penalties on payments which are not made by the required payment date by reason of a dispute between a Federal agency and a business concern over the amount of that payment or other allegations concerning compliance with a contract. Claims concerning any such dispute, and any interest which may be payable with respect to the period while the dispute is being resolved, shall be subject to the Contract Disputes Act of 1978.

CONGRESSIONAL OVERSIGHT

SEC. 5. (a) Each Federal agency shall file with the Director of the Office of Management and Budget a detailed report on any interest penalty payments made under this Act during the preceding fiscal year.

(b) Such report shall include the number, amounts, and frequency of interest penalty payments, and the reasons such payments were not avoided by prompt payment, and shall be delivered to the Director within sixty days after the conclusion of each fiscal year.

(c) The Director shall submit to the Committee on Governmental Affairs, the Committee on Appropriations, and the Committee on Small Business of the Senate and to the Committee on Government Operations, the Committee on Appropriations, and the Committee on Small Business of the House of Representatives within one hundred and twenty days after the conclusion of each fiscal year a report on Federal agency compliance with the requirements of this Act. Such report shall include a summary of the report submitted by each Federal agency under subsection (b) and an analysis of the progress made in reducing interest penalty payments by that agency from previous years.

DEFINITIONS

SEC. 6. For the purposes of this Act—

(1) the term "Federal agency" has the same meaning as the term "agency" in section 551(1) of title 5, United States Code, but also includes any entity (A) which is operated exclusively as an instrumentality of such an agency for the purpose of administering one or more programs of that agency, and (B)

which is so identified for this purpose by the head of such agency;

(2) the term "business concern" means any person engaged in a trade or business and nonprofit entities operating as contractors;

(3) an invoice shall be considered a "proper invoice" when it contains or is accompanied by such substantiating documentation (A) as the Director of the Office of Management and Budget may require by regulation, and (B) as the Federal agency involved may require by regulation or contract;

(4) an invoice shall be deemed to have been received by an agency on the later of—

(A) the date on which the agency's designated payment office or finance center actually receives a proper invoice;

or

(B) the date on which such agency accepts the property or service concerned;

(5) a payment shall be considered made on the date on which a check for such payment is dated; and

(6) a contract for the rental of real or personal property is a contract for the acquisition of that property.

EFFECTIVE DATE

SEC. 7. (a) This Act applies to the acquisition of property or services on or after the beginning of the first calendar quarter which begins more than ninety days after the date of enactment of this Act.

(b) The provisions of this Act requiring the promulgation of regulations shall be effective upon enactment, and such regulations shall be promulgated not later than ninety days after the date of enactment of this Act.

(c) The provisions of this Act shall apply to the Tennessee Valley Authority, but any regulations promulgated under the authority of this Act shall not be applicable to the Tennessee Valley Authority, which shall be solely responsible for implementing the provisions of this Act with respect to its contracts.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

APPENDIX C
STANDARD REASONS FOR LATE PAYMENTS

General. The following one-character alphabetic codes will be used by Navy activities to identify the primary reason that interest was incurred in the payment of a given invoice. This code will always appear in the first position of the cost code field in the accounting classification. The unit identification code (UIC) of the activity associated with the reason will be reflected in the Property Accounting Activity (PAA) field. For brevity, the term "responsible UIC" will be used to describe that activity. If an Army field or Air Force activity is determined to be responsible, the PAA field may cite "USARMY" or "AFORCE" respectively in the event that the specific station number is not available. If the responsible activity is another agency within the Department of Defense, the PAA field may cite "SECDEF" in lieu of the specific activity identifier. Agencies outside the Department of Defense will be identified as "NONDOD".

A. Contract, including amendments, not available in paying office. This is the responsibility of the contracting office, and the UIC of that activity will be reflected in the PAA field of the accounting line for interest payments. This code will be used if the request for the missing document was made ten or more calendar days prior to the expiration of the applicable grace period, and the document had not yet been received by the close of business of the sixth working day preceding the last day of the grace period.

B. Receiving documentation delay by receiving activity.

This is the responsibility of the receiving activity and the responsible UIC will be that of the receiving activity.

This code will be used under two different circumstances:

1. A request for the missing documentation was placed ten or more calendar days prior to the expiration of the applicable grace period and the required documentation had not been received prior to the close of business on the sixth working day preceding the last day of the grace period.
2. More than five working days elapsed between the date of acceptance of the goods and services and the receipt in the paying office of the approved invoice and receiving report, and this delay allowed the paying office less than fifteen calendar days to effect payment prior to the expiration of a fifteen day grace period (five or more calendar days prior to the expiration of shorter grace periods).

C. Delay to obtain required certification of invoice. This is a receiving activity responsibility. It applies only when the contract provided for a specified period of time to accept the goods or services, this time period was exceeded, and the paying office was permitted fifteen calendar days or less to effect payment with incurring interest charges (five calendar days or less in the case of meat, meat products, and perishable agricultural commodities).

D. Delays by paying office. This is a paying office responsibility, and the responsible UIC will be that of the paying office. This code is used whenever either of the following circumstances apply:

1. A bill properly payable was received fifteen calendar days or more prior to the expiration of the fifteen day grace period or five calendar days or more prior to the expiration of the shorter grace periods.
2. The provisions of Codes A, B, C, or E would have applied except that the properly payable bill was received in the paying office prior to the time specified in the description of those codes.

The forgoing rules continue to apply under the systems in which the invoice never goes to the paying office, and payment is made based on a remote input from another activity. Paying offices must, however, maintain local records for activities which contribute to late payments by failing to furnish the requested input in sufficient time to permit timely payment.

E. Military exercises in progress. This code is proper for use only in peace time when the activity or ship requisitioning the goods or services cannot be contacted by the paying office for information necessary to effect payment (e.g. accounting data, certification of receipt) due to restrictions on the use of telephone or message communication, and the request is sent by mail at least ten calendar days prior to the expiration of the grace period, and the information when obtained by mail or after the lifting of the restrictions is received after the close of business on the sixth working day preceding the last working day of the grace period. The UIC shown is that of the ship or activity that could not be contacted.

F. Discount taken in error. This is a paying office or branch paying office responsibility, except when the receiving activity supplies an erroneous date upon which the paying office relies in taking the discount. The code is

proper whenever it has been determined that a discount was wrongfully taken, and full payment was not made within the specified period of time prescribed by this notice. When this condition occurs, this code will be used regardless of whether the conditions described in the other codes apply as well.

G. Failure to notify vendor of defective invoice. This code can apply to either the receiving activity or the paying office. In either instance it applies only if the number of calendar days between the date of the invoice receipt and the date of rejection exceeds the maximum allowable number (fifteen in most cases), and that this excess is equal to or greater than the number of calendar days by which actual payment exceeded the expiration of the grace period. For example, if the invoice was returned four calendar days beyond the fifteen allowed, payment was made two calendar days beyond the expiration date of the grace period and Code F was inapplicable, this code would be appropriate. This code would not be appropriate if the same circumstances applied, except that payment was made six calendar days after expiration of the grace period. In determining the activity responsible, the paying office would be considered responsible only if the invoice was received in the paying office fifteen or more calendar days prior to the payment due date (five or more calendar days in the case of meat, meat products and perishable agricultural commodities). In all other instances, the receiving activity is responsible. This includes instances in which the receiving activity approves an improper bill for payment, but the bill does not reach the paying office within fifteen calendar days (or five calendar days when applicable) preceding the payment due date.

H. Automated system processing delay. In order for this code to be appropriate, the documented delay in calendar days must equal or exceed the number of calendar days beyond the expiration of the grace period on which payment was made. The responsible UIC should be that of the activity which controls the hardware, unless the failure can be conclusively attributed to a defective program. In that case, the UIC of the activity which prepared the program will be cited.

J. U.S. Postal Service delays. This code applies if none of the circumstances described in any of the codes apply, there is at least a seven calendar day gap between the documented mailing of the invoice by one activity inside the United States and the documented receipt of that same invoice by another activity in the United States, and payment exceeds the grace period by four calendar days or less. If either the sending or receiving activity is outside the United States, the documented mailing time must be at least fifteen days, and the payment date must be no more than eight calendar days beyond the expiration of the grace period. The PAA field should be zero filled.

K. All other. This code can be used at the discretion of the paying office, and may go so far as to include instances in which the facts lack sufficient clarity to permit a determination of why the payment was late. Any use of this code must be thoroughly documented by the paying office and available for inspection upon request. To the extent that a responsible activity can be identified, the UIC of that activity should appear in the PAA field. Otherwise the PAA field may be zero filled.

Summary It is theoretically possible for all ten reason codes to have some applicability to the processing of a

single invoice. The specific prioritization if multiple reasons appear to occur is as follows: F, D, A, B, G, C, H, E, J, K. The following chart list the codes in priority order. The intent is to hold paying offices responsible for late payments which they can reasonably be expected to prevent and to hold other activities responsible when their actions prohibit a paying office from making a timely payment.

- F Discount taken in error
- D Paying office delay
- A Contract not available
- B Receiving documentation delay
- G Delay in returning defective invoice
- C Certification delay
- H Automated system delay
- E Military exercises in progress
- J Postal Service delay
- K All other

APPENDIX D
CERTIFICATION INFORMATION FOR A NAVY FINANCE CENTER

IAW CINCPACFLT MSG 141914Z AUG 82
THE FOLLOWING INFO IS REQUIRED:

INVOICE NUMBER (S) _____

INVOICE DATE (S) _____

DATE MATERIAL REC'D _____

DATE INVOICE REC'D _____

DATE FWD'D FOR PMT _____

AMT APPROVED FOR PMT _____

GOODS ACCEPTANCE CERTIFIED BY:

(name/functional title/activity)

PAYING OFFICE _____
(name and/or UIC)

DISC NC442 ATTACHED? YES ___ NO ___

APPENDIX E
CERTIFICATION REQUIREMENTS INFORMATION FOR A NAVY SUPPLY CENTER

UIC: Activity Name: Address:	Preprinted Activity Name/Address/UIC	
Contract/Purchase Order Number:		
Invoice No.	Invoice Date	Amount
Date Inv Rec'd		Date Mat'l/Svc Rec'd
----- Approved for payment \$ _____ ----- Accepted and conforms to contract; ----- except as noted, prices are agreed upon, fair and reasonable		
Certifying Signature		Date Accepted Phone
(preprint name and title auth. gov't rep)		
Accounting Data (when applicable)		
For'd _____ NO0228 NSCO Oakland 94625 To: ----- Other UIC _____		
Date Forw'd _____		
----- Imprest Fund purchase erroneously not sent COD		
----- No Purchase Order Required		
----- Special Payment Terms (Meat, Perishable Agriculture Commodities, Other)		
Date Funds Obligated _____		
Interest Due Date _____		

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